

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS:
COUNTY OF ALLEN)

JONATHON P. PLANK,)
)
Plaintiff,)
)
v.) CAUSE NO.: 02D0_____
)
MIDWEST SHOOTING CENTER)
MANAGED SERVICES, LLC)
)
Defendant.)

COMPLAINT FOR DAMAGES

Plaintiff Jonathon P. Plank (“Plank”) for his complaint against Midwest Shooting Center Managed Services, LLC (“Midwest Shooting”) states the following:

I. Parties

1. Plank is a resident of Allen County, Indiana.
2. Midwest Shooting is a limited liability company in Ohio which operates a facility at 4140 Coldwater Road, Fort Wayne, Indiana 46805.
3. Plank alleges that Midwest Shooting failed to pay wages pursuant to the Indiana Wage Claim Act (“IWCA”), I.C. §22-2-9, *et seq.* and breached the employment contract between the parties and retaliated against Plank by terminating

his employment for voicing his concerns about compliance with Indiana Wage Payment laws in violation of the laws and public policies of the State of Indiana.

4. Midwest Shooting is an employer for purposes of the IWCA.
5. Plank's counsel sought and obtained authorization from the Indiana Office of the Attorney General to pursue this wage claim. A copy of the application for wage claim and subsequent letter of authorization are attached hereto and made a part hereof as Exhibits 1 and 2 respectively.
6. Jurisdiction in this Court is appropriate pursuant to Indiana Trial Rule 4.4(a)(1) and (4).
7. Venue is proper in Allen County per Indiana Trial Rule 75(a)(4) and (10).

II. Factual Allegations

8. Plank was an employee of Midwest Shooting from June, 2021 to March 30, 2023.
9. Midwest Shooting runs a shooting range, sells merchandise, and provides training services to customers.
10. Plank's hire date was June 4, 2021.

11. When first offered employment as an Assistant General Manager, Plank was offered a bonus structure of 10% of incremental profits above the established forecast. A copy of the initial offer letter is attached as Exhibit 3.

12. This bonus structure was later amended in writing effective January 1, 2022, to reduce the Assistant Manager bonus to 7.5% of incremental profits above the established forecast not to exceed \$100,000. A copy of this agreement is attached as Exhibit 4.

13. Plank began working as an Assistant General Manager at a salary of \$65,000.00 and was ultimately promoted to General Manager of Midwest Shooting's Coldwater Road location.

14. On March 16, 2022, Plank was promoted to General Manager effective April 1, 2022, where he was given a raise and a bonus structure increase.

15. Plank's General Manager employment offer effective April 1, 2022, included a base pay of \$72,000 per year, PTO, an IRA, health care insurance and also a commission structure.

16. Plank's signed General Manager Agreement ("Agreement") is attached hereto as Exhibit 5.

17. This General Manager Agreement provided a bonus "equivalent to 12.5% of incremental profits above the established forecast."

18. The bonus was to be paid no later than March 15th of the following year.
19. Midwest Shooting never paid out any bonus on March 15, 2023, to either Plank or any other bonus eligible employee at the Fort Wayne location.
20. Upon information and belief, the Fort Wayne location was the most successful location for Midwest Shooting and exceeded all of its forecast sales, growth and budgetary goals for the 2022-2023 fiscal year.
21. Plank was informed by COO Eric Kline in February that the Fort Wayne store had exceeded its goals and they (Plank and other bonus-eligible employees at the Fort Wayne location) would definitely be receiving bonuses.
22. Plank communicated the good news to bonus eligible employees that they would be receiving bonuses prior to the March 15th payout deadline.
23. On or about March 15, 2023, Plank emailed District Manager Zach Van Dusen (“Van Dusen”) and Human Resources Manager, Diana Neville, asking about the bonuses as no one in the Fort Wayne office had yet received anything. Van Dusen informed Plank that they would talk about it on March 16.
24. On March 16, 2023, Van Dusen, for the first time, indicated that no one in Fort Wayne would receive a bonus, claiming the expenditures were higher than they expected.

25. The numbers, as shared to Plank, did not add up and some were flat out incorrect, such as treating brass recovery as an expenditure item rather than a revenue stream. Other fees looked suspect to Plank, including \$58,000 in marketing and \$71,000 in banking fees.

26. Van Dusen then claimed, in addition, that there was \$500,000 baseline that had to be achieved, which had never been communicated or shared with anyone at the Fort Wayne location or upon information and belief at any other store locations.

27. Midwest Shooting expected Plank to communicate to his team that they would not be receiving bonuses, but Plank balked at this because he did not know where they were coming up with an additional \$500,000 threshold and asked that upper level management be there to explain themselves and the numbers.

28. As General Manager, Plank attempted to advocate for his workers, particularly those that should have received bonuses.

29. After Plank objected to this reversal on the bonuses, and questioned how Midwest Shooting was calculating their denial of bonuses, Plank's employment was terminated on March 30, 2023.

30. The reason given to Plank for his termination was his "lack of leadership" and the negative work environment from the bonus.

Count I
Violation of Indiana Wage Claim Act

31. Plank incorporates herein by reference the above-referenced paragraphs 1-30 as if fully restated herein.

32. Midwest Shooting is an employer for purposes of the wage claim statute, Indiana Code §22-2-9-1(a).

33. Under the IWCS, wages may include all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece or commission basis, or on any other method of calculating such amount. Indiana Code §22-2-9-1(b).

34. Under the statute, whenever any employer separates an employee from the payroll, any unpaid wages or compensation of such employee shall become due and payable at the regular payday for the pay period in which the separation occurred. Code Indiana Code §22-2-9-2(a).

35. Plank was terminated by Midwest Shooting on March 30, 2023, after it refused to pay him his bonus, and after he complained about the same on behalf of himself and others in the workplace.

36. Plank contends that his bonus constitutes wages under the IWCS and Midwest Shooting violated the law in refusing to pay the bonus to himself and others.

37. Plank filed a wage claim on August 4, 2023, and requested a referral to counsel on his claim.

38. Plank received the referral to counsel and has met his administrative remedies under the statute.

WHEREFORE, Plaintiff prays for judgment against Defendant for compensatory damages, liquidated damages, reasonable attorney fees and costs, and all other just and proper relief in the premises.

Count II
Breach of Contract

39. Plank incorporates herein by reference the above-referenced paragraphs 1-38 as if fully restated herein.

40. Midwest Shooting offered to pay a bonus structure pursuant to the terms of the agreement entered into on or about March 16, 2022, and then failed to pay it after Plank exceeded the set goals for the year.

41. Plank has been damaged by the failure of Midwest Shooting to pay him these additional monies and commissions in breach of the agreement made between Plank and Midwest Shooting since the time of his hire and since his promotion in March of 2022.

Count III
Unjust Enrichment

42. Plank incorporates herein by reference the above-referenced paragraphs 1-41 as if fully restated herein.

43. Midwest Shooting promised to pay Plank a set bonus based upon achieving and exceeding budgetary goals set forth in Plank's employment agreement.

44. Midwest Shooting failed to pay Plank monies for these goals that Plank and the Fort Wayne location achieved.

45. Midwest Shooting continued in its possession of these monies generated by Plank's efforts.

46. Midwest Shooting has been unjustly enriched by its continued possession of these monies owed to Plank.

Count IV
Detrimental Reliance and Promissory Estoppel

47. Plank incorporates herein by reference the above-referenced paragraphs 1-46 as if fully restated herein.

48. Midwest Shooting promised to pay Plank additional bonuses and compensation for meeting and exceeding certain budgetary goals pursuant to the agreement Plank entered into with Midwest Shooting in March of 2022.

49. Midwest Shooting failed to pay Plank the monies he was owed between 2021 and 2023.

50. Plank relied on these promises in part to take this job and stay in the job in 2021 through 2023.

51. Plank relied on these promises to his detriment.

52. Plank has been damaged by the failure of Midwest Shooting to pay him these monies for the bonuses and wages he is owed.

Count V
Wrongful Termination

53. Plank incorporates herein by reference the above-referenced paragraphs 1-52 as if fully restated herein.

54. On March 30, 2023, Midwest Shooting terminated Plank's employment after Plank advocated on behalf of himself and others at the Fort Wayne location for them to receive their bonuses as promised under their respective agreements.

55. Plank contends his termination was in retaliation for Plank's attempt to have Midwest Shooting comply with their legal obligations to pay employees promised wages and compensation in accordance with Indiana Wage law

56. Plank's termination is thus in violation of public policy under Indiana law and the public policies of the State of Indiana and the Indiana Wage Claim Act.

57. Plank's termination amounts to unlawful retaliatory conduct and is the direct and proximate cause of Plaintiff suffering the loss of his job and job-related benefits, including income, and additional inconvenience, mental anguish, emotional distress and other damages and injuries.

58. The unlawful discriminatory and retaliatory conduct of Midwest Shooting was intentional, knowing, willful, wanton and reckless disregard of Plank's rights under the laws and public policies of the State of Indiana warranting a position of punitive damages.

WHEREFORE, Plaintiff, by counsel, respectfully requests judgment against the Defendant for compensatory damages, punitive damages, reasonable attorneys fees and costs and all other just and proper relief in the premises.

JURY DEMAND

Plank demands a trial by jury.

Respectfully submitted,

BURT, BLEE, DIXON, SUTTON &
BLOOM, LLP

/s/Martha M. Lemert
Martha M. Lemert (#20961-02)
200 East Main Street, Suite 1000
Fort Wayne, IN 46802
Phone: (260) 426-1300
Fax: (260) 422-7932
Email: mlemert@burtblee.com
Attorney for Plaintiff, Jonathon P. Plank



August 8, 2023

VIA FAX: 317/233-3790
David M. Redden, Commissioner of Labor
Indiana Department of Labor
402 West Washington Street, Room W195
Indianapolis, IN 46204

Re: Claimant: Jonathan Plank
Respondent: Midwest Shooting Center Fort Wayne, LLC

Dear Mr. Redden:

This letter constitutes a referral request that the Indiana Department of Labor allow me to proceed on behalf of my client with this claim under I.C. §22-2-5-1/§22-2-9-1 *et seq.* I am an attorney in good standing with the State Bar of Indiana and the State Bar of Ohio, and I have been practicing labor employment law for over 25 years. We are not aware of any conflicts that exist in the making of this claim and we ask permission of the Indiana Department of Labor to refer the matter to my representation of Mr. Plank.

If you have any questions or concerns, please do not hesitate to contact me.

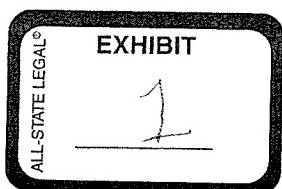
Very truly yours,

BURT, BLEE, DIXON, SUTTON & BLOOM, LLP

A handwritten signature in black ink, appearing to read 'Martha M. Lemert'.

Martha M. Lemert

MML/jsg
Enc.



Martha M. Lemert
PARTNER

Telephone: 260-426-1300
Facsimile: 260-422-3750
Email: mlemert@burtblee.com

200 East Main Street, Suite 1000
Fort Wayne, IN 46802

Mailing Address:
P.O. Box 10810
Fort Wayne, IN 46854-0810

Offices also located
in Auburn:

1320 South Grandstaff Drive
Auburn, IN 46706
Telephone: 260-925-3787



APPLICATION FOR WAGE CLAIM

State Form 2069 (R5 / 12-09)
INDIANA DEPARTMENT OF LABOR

Wage Claim # _____

INDIANA DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
402 West Washington Street, W195
Indianapolis, IN 46204

(Please type or print your response and be sure to answer all questions)

Employee	Employer
Name Jonathan Plank	Name Midwest Shooting Center Fort Wayne, LLC
Address 1524 Copper Mine Passage	Address 195 Hancock Street
City Fort Wayne	City Delaware
State, and Zip Code IN 46845	State, and Zip Code OH 43015
Telephone number (260) 426-1300	Telephone number (260) 308-9000

Amount of Claim	Length of Employment:	From	To
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Address Where Work Was Performed:
4140 Coldwater Road, Fort Wayne IN 46805

Reason for Leaving Employment: Terminated

Reason Given for Non-Payment: Unknown

Wage Agreement:	Hourly	Salary	\$72,000	Commission	12.5%	Piece Rate
Type of Claim:	Check Box(es)	Minimum Wage Complaint	Non-Payment of Overtime	Non-Payment of Vacation	Payroll Deduction	Non-Payment of Paychecks <input checked="" type="checkbox"/>

- INSTRUCTIONS:**
- (1) Show, mathematically, how you calculated the amount of your claim
 - (2) Be sure to list the dates of non-payment, including hours worked each day with beginning and ending times
 - (3) Submit supporting documentation

Employment offer effective 04/01/22: Base pay - \$72,000.00 PTO - 27 hours IRA Healthcare Commissions 12.5% of incremental profits above established forecast; bonus to be paid no later than 03/15/23.	Claimant was not paid commission despite exceeding set goals for the year. The amount of wage claim is unknown at this time but may exceed \$60,000.00. The parties will need to engage in discovery to determine the exact wage claim amount.
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Incomplete Forms:

Any incomplete Application for Wage Claim will be returned to its sender in its entirety without action taken from our Department.

Date Received (Office Use Only)

Disclaimer

The Department of Labor has the right to reject this claim at any time if, in the judgement of the Commissioner of Labor, said claim is not valid and enforceable in the courts.

Signed

Dated

8-4-23

Midwest Shooting Center Managed Services, LLC

4140 Coldwater Road
Fort Wayne, IN. 46805

March 16, 2021

Dear Jon Plank,

This offer of employment defines the financial and administrative terms upon which you would be employed by our company and assigned the General Manager at Midwest Shooting Center. This offer of employment is contingent upon the successful completion of a background check and drug screening. This offer takes effect April 1, 2022.

Compensation package includes:

Base Pay:

- \$72,000 annually

Incentives:

- Annually the General Manager will participate in a process to establish a forecast for the following year that upper management and the Midwest Shooting Center Board of Directors can rely on. The General Manager will be eligible to earn a bonus equivalent to 12.5% of incremental profits above the established forecast. The bonus will be paid no later than March 15th of the following year

Benefits:

- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our healthcare program at 90-days of employment
- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our Simple IRA program at 180-days of employment, where the company matches 3%
- Paid Time Off (PTO) and Sick/Personal time:
 - (27) sick/personal hours the first 12 months of employment
 - (27) sick/personal hours + (45) hours of PTO at 1-year anniversary
 - (27) sick/personal hours + (90) hours of PTO at 2-year anniversary
 - (27) sick/personal hours + (135) hours of PTO at 3-year anniversary and each anniversary thereafter
 - At no time shall an employee accrue more than 135 hours of PTO

General Conditions:

- Employment will begin upon signing this offer of employment and agreeing on a mutually acceptable start date

- Upon exit from the company, we have a “must be present to collect” policy on commissions/bonuses that states an employee must be in our active employee pool and in good standing to receive commission/bonus payouts.
- You will be required to pass a drug screening regardless of state laws.
- We are open to annually reviewing the compensation program to ensure that it is equitable and motivating

We are excited to have you join the Midwest Shooting Center team and to participate in building the success of the organization. Your great attitude and ambitious drive will prove to be a winning formula to help make this a great venture for everyone involved.

Regards,

Diana Neville
Human Resources
Midwest Shooting Center Managed Services

I understand and accept the terms of this offer of employment,

Jonathon Plank
Jon Plank

OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA



302 W. WASHINGTON ST. IGCS 5TH FLOOR
INDIANAPOLIS, IN 46204-2770

TODD ROKITA
ATTORNEY GENERAL

September 11, 2023

Sent via E-mail to: mlemert@burblee.com

Burt Blee
Attn: Martha Lemert
200 East Main Street, Suite 1000
Fort Wayne, IN 46802

Re: Jonathan Plank v. Midwest Shooting Center Fort Wayne, LLC

Dear Counsel,

I am writing in response to your request that the Office of the Attorney General provide you with authorization to pursue the claimant's wage claims in the above-referenced case. This Office has no objection to your pursuing such claims and, to the extent that it is authorized to refer the case to your office for action, hereby does so. No finding is made by the Office of the Attorney General as to any issues that might be construed as having been raised by this complaint.

You have represented that you are an attorney admitted to the practice of law in Indiana and in good standing. You have further represented that you have uncovered no conflicts of interest in the above-referenced matter. Thus, we are authorizing you pursuant to Indiana Code § 22-2-9-4 to represent the individual plaintiff in this action.

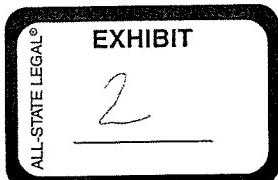
Feel free to contact me at (317) 233-0878 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Adrienne Pope".

Adrienne Pope
Government Litigation Section Chief

cc: Patricia Orloff Erdmann, Chief Counsel for Litigation, OAG



Midwest Shooting Center Managed Services, LLC

4140 Coldwater Road

Fort Wayne, IN: 46805

June 4, 2021

Dear Jon,

This offer of employment defines the financial and administrative terms upon which you would be employed by our company and assigned the Assistant General Manager at Midwest Shooting Center Fort Wayne. This offer of employment is contingent upon the successful completion of a background check and drug screening.

Compensation package includes:

Base Pay:

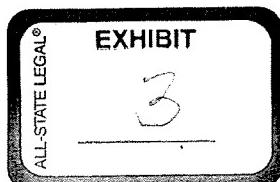
- \$65,000 annually

Incentives:

- Annually the Assistant General Manager will participate in a process to establish a forecast for the following year that upper management and the Midwest Shooting Center Board of Directors can rely on. The Assistant General Manager will be eligible to earn a bonus equivalent to 10% of incremental profits above the established forecast. This bonus will be paid no later than March 15th of the following year

Benefits:

- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our healthcare program at 90-days of employment
- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our Simple IRA program at 180-days of employment, where the company matches 3%.
- After 3-years of service to the company Midwest Shooting Center Managed Services will pay a profit share bonus to the employee equal to 5% of their earnings at the below rates:
 - (3) years of service: 70%
 - (4) years of service: 85%
 - (5) years of service: 100%
 - Each additional year of service is vested at 100% and paid to the employee the commission payroll of the following month
- Paid Time Off (PTO) and Sick/Personal time:
 - (3) sick/personal days the first 12 months of employment



- Any pre-planned vacations/days off please report with acceptance of this offer letter
- (3) sick/personal days + (45) hours of PTO at 1-year anniversary
- (3) sick/personal days + (90) hours of PTO at 2-year anniversary
- (3) sick/personal days + (135) hours of PTO at 3-year anniversary and each anniversary thereafter
- At no time shall an employee accrue more than 135 hours of PTO

General Conditions:

- Employment will begin upon signing this offer of employment and agreeing on a mutually acceptable start date.
- Upon exit from the company, we have a "must be present to collect" policy on commissions/bonuses that states an employee must be in our active employee pool and in good standing to receive commission/bonus payouts
- We are open to annually reviewing the compensation program to ensure that it is equitable and motivating

Jon, we are excited to have you join the Midwest Shooting Center Fort Wayne team and to participate in building the success of the organization. Your great attitude and ambitious drive will prove to be a winning formula to help make this a great venture for everyone involved.

Regards,

Diana Neville
Human Resources
Midwest Shooting Center Managed Services

I understand and accept the terms of this offer of employment,



Jonathon Plank

Midwest Shooting Center Managed Services, LLC

4140 Coldwater Road
Fort Wayne, IN. 46805

EFFECTIVE JANUARY 1, 2022

Dear Jon,

This offer of employment defines the financial and administrative terms upon which you would be employed by our company and assigned the Assistant General Manager at Midwest Shooting Center. This offer of employment is contingent upon the successful completion of a background check and drug screening.

Compensation package includes:

Base Pay:

- \$65,000 annually

Incentives:

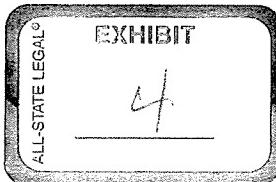
- Each year the General Manager of your home location will participate in a process to establish a facility budget for the upcoming year that upper management can rely on. The AGM will be eligible to earn a bonus equivalent to 7.5% of incremental profits above the established budget. The bonus will be paid no later than March 15th of the following year.
 - Bonus not to exceed \$100,000 annually.

Benefits:

- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our healthcare program at 90-days of employment
- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our Simple IRA program at 180-days of employment, where the company matches 3%
- Paid Time Off (PTO) and Sick/Personal time:
 - (3) sick/personal days the first 12 months of employment
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 - (3) sick/personal days + (90) hours of PTO at 2-year anniversary
 - (3) sick/personal days + (135) hours of PTO at 3-year anniversary and each anniversary thereafter
 - At no time shall an employee accrue more than 135 hours of PTO

General Conditions:

- Employment will begin upon signing this offer of employment and agreeing on a mutually acceptable start date



Midwest Shooting Center Managed Services, LLC
4140 Coldwater Road
Fort Wayne, IN, 46805

March 16, 2021

Dear Jon Plank,

This offer of employment defines the financial and administrative terms upon which you would be employed by our company and assigned the General Manager at Midwest Shooting Center. This offer of employment is contingent upon the successful completion of a background check and drug screening. This offer takes effect April 1, 2022.

Compensation package includes:

Base Pay:

- \$72,000 annually

Incentives:

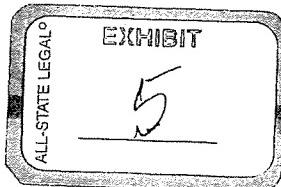
- Annually the General Manager will participate in a process to establish a forecast for the following year that upper management and the Midwest Shooting Center Board of Directors can rely on. The General Manager will be eligible to earn a bonus equivalent to 12.5% of incremental profits above the established forecast. The bonus will be paid no later than March 15th of the following year

Benefits:

- If the employee is full-time (defined as averaging over 30 hours per week), they are eligible to participate in our healthcare program at 90-days of employment
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 - At no time shall an employee accrue more than 135 hours of PTO

General Conditions:

- Employment will begin upon signing this offer of employment and agreeing on a mutually acceptable start date



- ↳ Upon exit from the company, we have a "must be present to collect" policy on commissions/bonuses that states an employee must be in our active employee pool and in good standing to receive commission/bonus payouts
- ↳ You will be required to pass a drug screening regardless of state laws.
- ↳ We are open to annually reviewing the compensation program to ensure that it is equitable and motivating

We are excited to have you join the Midwest Shooting Center team and to participate in building the success of the organization. Your great attitude and ambitious drive will prove to be a winning formula to help make this a great venture for everyone involved.

Regards,

Diana Neville
Human Resources
Midwest Shooting Center Managed Services

I understand and accept the terms of this offer of employment,

Jon Plank
Jon Plank